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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,936	08/30/2002	Peter Miskech	201-1582 RLC	3622

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EXAMINER

GUTMAN, HILARY L

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 07/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,936

Applicant(s)

MISKECH ET AL.

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-12 and 14-19 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: the copy of the names of the inventors and the dates is unclear in that the names are not clearly printed and are illegible.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Hull.

Hull discloses a vehicle bed assembly comprising a front panel K'; a first side panel W; a second side panel W; a floor panel A which is coupled to the first and to the second side panels and which is further coupled to the front panel; a first rail P, disposed both vertically and horizontally, which receives and which is linearly coextensive to the first side panel, the first rail coupling the first side panel to the front panel; and a second rail P, disposed both vertically and horizontally, which is substantially identical to the first rail and which receives and which is linearly coextensive to the second side panel, the second rail coupling the second side panel to the front panel. Also, an end cap member R is disposed within the first rail and selectively couples the first side panel to the front panel. Each of the first and second side panels are thought to be corrugated (Figure 1).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hull as applied to claim 2 above, and further in view of Carr.

Hull lacks first and second reception members.

Carr teaches a vehicle bed assembly comprising a front panel (not shown); a first side panel; a second side panel; and a floor panel which is coupled to the first and to the second side panels and which is further coupled to the front panel. In addition, Carr teaches a first reception member 16 which is coupled to the first side panel and a second reception member 16 which is coupled to the second side panel and which is substantially identical to the first reception member. The first reception member comprises a first portion 29 which forms a member

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reception pocket having an axis of symmetry which is parallel to a plane containing the first side panel; and a second stem portion 30 which forms an acute angle with the axis of symmetry.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided first and second reception members as taught by Carr upon the side panels of Hull in order to allow cargo in the bed to be braced or restrained.

Allowable Subject Matter

7. Claims 8-12 and 14-19 are allowed.
8. Claims 3-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 1-2 and 5-7 have been considered but are moot in view of the new ground(s) of rejection. However, some arguments filed 6/2/2002 warrant a response set forth below.

With regard to the oath/declaration the applicant states that a new declaration is enclosed but the examiner can find no evidence of the new declaration. Therefore the objection is maintained.

With respect to the 102 rejection under Hull, the applicant states that the claim has been amended to recite "for a motor vehicle" in order to distinguish the invention from Hull.

However, the examiner would like to point out that this is an intended use recitation. It should be noted that a recitation of the intended use of the claimed invention must result in a structural

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difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In addition, the applicant states that claim 1 has been amended more distinctly by claiming that the first and second rails are disposed horizontally. The examiner does not believe this limitation overcomes the Hull rejection. Specifically, the rails in Hull are three dimensional and therefore are disposed horizontally as claimed.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496. The examiner can normally be reached on M-F 7:30am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-3297 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

12. **Any response to this final action should be mailed to:**

Box AF
Assistant Commissioner for Patents
Washington, D.C. 20231

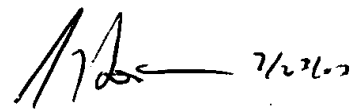
or faxed to:

(703)305-3597, (for formal communications; please mark "EXPEDITED PROCEDURE")

or:

(703)308-3297, (for informal or draft communications, please clearly label "PROPOSED" or "DRAFT").

hlg
July 23, 2003


STEPHEN T. GORDON
PRIMARY EXAMINER